

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL HALL,

Plaintiff,
v.
CIVIL ACTION NO. 10-13109
HONORABLE DENISE PAGE HOOD

PATRICIA LAMB,

Defendant.

/

ORDER ACCEPTING REPORT AND RECOMMENDATION,
GRANTING MOTION TO DISMISS,
DENYING MOTION FOR SANCTIONS, and
DENYING ANY APPEAL TO PROCEED IN FORMA PAUPERIS

This matter is before the Court on Magistrate Judge Paul J. Komives' Report and Recommendation filed June 12, 2012 [Doc. # 29]. No Objections have been filed to the Report and Recommendation and the time to file Objections has passed.

The standard of review by the district court when examining a Report and Recommendation is set forth in 28 U.S.C. § 636. This Court "shall make a *de novo* determination of those portions of the report or the specified proposed findings or recommendations to which an objection is made." 28 U.S.C. § 636(B)(1)(c). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the Magistrate." *Id.* In order to preserve the right to appeal the Magistrate Judge's recommendation, a party must file objections to the Report and Recommendation within fourteen (14) days of service of the Report and Recommendation. Fed. R. Civ. P 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Secretary of Health and Human Servs.*, 932 F2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). As Plaintiff filed the complaint *pro se*, the Court will interpret his pleadings liberally. *Hughes v. Rowe*, 499 U.S. 5, 9 (1980); *Haines*

v. Kerner, 404 U.S. 519, 520-21 (1972).

After review of the Magistrate Judge's Report and Recommendation, the Court finds that his findings and conclusions are correct. The Court agrees with the Magistrate Judge that Plaintiff has failed to rebut the remaining Defendant Patricia Lamb's affidavit asserting that she never treated Plaintiff. Defendant Lamb asserts that she is the Chief Medical Examiner for Lenawee County and that she never provided medical treatments to Plaintiff.

Although Defendant Lamb filed a Motion to Dismiss under Rule 12(b)(6) of the Rules of Civil Procedure, which is a dismissal based on the allegations on the Complaint only, the Magistrate Judge considered the motion as a summary judgment motion under Rule 56 given the affidavit submitted by Defendant Lamb. The Magistrate Judge ordered Plaintiff to file a response to the motion. (DE # 24) The Magistrate Judge warned Plaintiff that Defendant Lamb's assertions in the affidavit would be accepted as true if Plaintiff failed to file an opposing affidavit as required by Rule 56(e). (DE #24) Plaintiff did not respond to the motion or submit an opposing affidavit. The Court finds that there are no genuine issues of material fact that Defendant Lamb did not treat Plaintiff. Defendant Lamb's Motion to Dismiss under Rule 12(b)(6), considered by the Court as a Motion for Summary Judgment under Rule 56(a), is granted.

The Court also agrees with the Magistrate Judge that Defendant Lamb's Motion for Sanctions should be denied without prejudice. Defendant Lamb may file the appropriate documents or motions as to costs and attorney fees under Fed. R. Civ. P. 54(b) and 42 U.S.C. § 1988(b), pursuant to the procedures set forth in E.D. Mich. Local Rules 54.1 and 54.1.2.

Accordingly,

IT IS ORDERED that the Magistrate Judge Paul J. Komives' Report and Recommendation

[DE # 29, filed 6/12/2012] is ACCEPTED and ADOPTED as this Court's findings of facts and conclusions of law.

IT IS FURTHER ORDERED that Defendant Patricia Lamb's Renewed Motion to Dismiss in Lieu of Responsive Pleadings, considered as a Motion for Summary Judgment [DE # 23, filed 9/27/2011], is GRANTED.

IT IS FURTHER ORDERED that Defendant Patricia Lamb's Motion for Sanctions [DE #25, 11/11/2011] is DENIED without prejudice.

IT IS FURTHER ORDERED that Defendant Patricia Lamb is DISMISSED with prejudice.

IT IS FURTHER ORDERED that the unnamed JOHN DOES are DISMISSED without prejudice.

IT IS FURTHER ORDERED that this action is DISMISSED.

IT IS FURTHER ORDERED and certified that any appeal from this decision would be frivolous and not taken in good faith. An appeal may not be taken *in forma pauperis* under 28 U.S.C. § 1915(a)(3); *Coppedge v. United States*, 369 U.S. 438, 445 (1962), *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

S/Denise Page Hood
United States District Judge

Dated: July 30, 2012

I hereby certify that a copy of the foregoing document was served upon Michael Hall #303394, 902 Boyd Drive #6, Albion, MI 49224 and counsel of record on July 30, 2012, by electronic and/or ordinary mail.

S/LaShawn R. Saulsberry
Case Manager